

Filed by: Motions Panel
Interference Division
Mail Stop Interference
P.O. Box 1450
Alexandria Va 22313-1450
Tel: 571-272-4683
Fax: 571-273-0042

Paper: 61
Filed February 27, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ALEXANDER KAMB
Junior Party
(Patent No. 6,090,578),

v

DAVID H. BEACH, DOUGLAS J. DEMETRICK,
MANUEL SERRANO AND GREGORY J. HANNON,
Senior Party
(Application No. 09/016,869).

Patent Interference No. 105,459 (MPT)
(Technology Center 1600)

Judgment – Preliminary Motions - Bd. R. 127

2

3 Before: SALLY G. LANE, MICHAEL P. TIERNEY, and

4 JAMES T. MOORE Administrative Patent Judges.

5 TIERNEY, Administrative Patent Judge.

6

7 The Board has entered a Decision on Motions in this interference.
8 (Paper 60). As discussed in the Decision, Kamb's involved claims are
9 unpatentable as anticipated by Beach's U.S. Patent 5,889,169 under

1 35 U.S.C. § 102(e). Kamb did not seek to antedate the November 18, 1993
2 effective filing date of Beach's '169 patent nor did Kamb file a priority
3 statement alleging a date of conception earlier than Beach's earliest
4 accorded filing date, which is also November 18, 1993. Accordingly, Kamb
5 is unable to contest priority of invention. 37 C.F.R. § 41.204. Based upon
6 the facts presented, we decline to continue the interference. Judgment is
7 entered against Kamb.

8 It is:

9 **Ordered** that judgment on priority of invention as to Count 1, the sole
10 count in interference, is awarded against Kamb.

11 **Further Ordered** that Kamb is not entitled to Kamb, U.S. Patent
12 6,090,578, claims 2-3, both of which correspond to Count 1.

13 **Further Ordered** that claims 2-3 of Patent 6,090,578 be
14 CANCELED, 35 U.S.C. § 135(a).

15 **Further Ordered** that a copy of the Decision and Judgment be placed
16 in the files of Kamb, U.S. Patent 6,090,578, and Beach, U.S. Application
17 09/016,869.

18 **Further Ordered** that should there be a settlement agreement, the
19 parties' attention is directed to 35 U.S.C. § 135(c) and Bd. R. 205.

/Michael P. Tierney/)
MICHAEL P. TIERNEY)
Administrative Patent Judge)

/James T. Moore/)
JAMES T. MOORE)
Administrative Patent Judge)

/Sally Gardner Lane/)
SALLY GARDNER LANE)
Administrative Patent Judge)

via: (electronic mail):

Attorney's for Beach:

Janelle D. Waack
Viola T. Kung
HOWREY LLP
1111 Louisiana, 25th Floor
Houston, TX 77002-5242
Tel: (713) 787-1686- Waack
Tel: (650) 798-3570- Kung
Email: waackj@howrey.com
Email: kungv@howrey.com

Attorney's for Kamb:

Jay Z. Zhang
Herbert L. Ley III, Ph. D.
MYRIAD GENETICS, INC.
320 Wakara Way
Salt Lake City, UT 84108
Tel: (801) 584-3600
Fax: (801) 883-3871-
Email: jzhang@myriad.com
Email: hley@myriad.com

Dyar, Leneetha

From: on behalf of Interference Trial Section
To: waackj@howrey.com; kungv@howrey.com; jzhang@myriad.com; hley@myriad.com
Subject: Interference 105459 (MPT), Paper No. 60-Decision-Bd.R. 125, Paper No. 61-Judgment-Preliminary Motions-Bd.R. 127
Attachments: 105459 060.pdf; 105459 061.pdf